

INDIANAPOLIS DEPARTMENT OF WATERWORKS
BOARD OF DIRECTORS

MINUTES OF THE MEETING OF
THURSDAY SEPTEMBER 26, 2002

The meeting was called to order at 5:00 p.m. by Chairperson John Mutz in Room 107 of the City-County Building, 200 East Washington Street, Indianapolis, Indiana.

The following members of the Board of Directors (the "Board") of the Department of Waterworks (the "Department") were in attendance: Jack Bayt, Beulah Coughenour, Barbara Howard, S. Michael Hudson, Alan Kimbell and John Mutz.

I. Approval of the Minutes

Chairperson Mutz requested that the Board members review the minutes of the August 21, 2002 Board meeting as set forth in Exhibit A, attached hereto and made a part hereof ("Minutes"). Ms. Coughenour stated that due to catastrophic tornado damage to her home computer, she had not been able to review the Minutes and would rely on the recommendation of her fellow Board members as to the adequacy of the Minutes. Mr. Bayt moved that the Minutes be approved. Ms. Howard seconded the motion, and a vote was taken. The Board unanimously approved the Minutes. Chairperson Mutz signed the Minutes.

II. Financial Report of Robert Erney, Financial Manager of the Department

Mr. Erney stated that he intended to present a financial report, a sales tax item and a complete physical inventory listing to the Board. Mr. Erney presented his financial report as set forth in Exhibit B, attached hereto and made a part hereof ("Financial Report"). Chairman Mutz asked if there were any questions concerning the first page of the Financial Report. Ms. Coughenour asked about the status of account payables. Mr. Erney replied that \$41,000 of accounts payable from pre April 30, 2002 were addressed in August 2002.

Mr. Erney proceeded with the second page of the Financial Report. Mr. Hudson asked if the improvement in aging accounts receivable is real improvement or one related to writing off bad debts. Mr. Erney stated he did not believe anything has been written off. Chairperson Mutz stated that bad debt should be monitored. Mr. Bayt suggested that it should be added to the Financial Report. Chairperson Mutz asked how a negative figure exists for aging accounts receivable as of July 2002. Mr. Erney explained that the computer system includes all payments received over 90 days past due not just those at 90 days.

Chairperson Mutz asked if customers may pay bills on a budget plan. James Buckler of USFilter Indianapolis Water, LLC ("USFIW") and Mr. Erney stated no. Mr. Buckler

added that if a customer has a large outstanding bill then installment payments are acceptable.

Chairperson Mutz asked about the water shut off policy. Mr. Erney stated that upon a bill being 90 days past due, a letter is sent to the customer stating the water will be shut off in 7 days. He added that another is sent declaring an additional 7 day extension period. Mr. Erney stated that the valve on the meter is turned off if no payment is received. Chairperson Mutz noted that this permits the customer to turn the meter back on.

Chairperson Mutz asked if USFIW employees in the field have the authority to address financial hardships upon arriving to turn off the water. Mr. Buckler stated that based on practices in other cities if someone discovers a hardship situation the employee may permit the customer to store some water before shutting it off. Mr. Buckler added that if there were issues concerning this matter then complaints would have arisen by now. Mr. Buckler stated that he was aware of no such complaints. Ms. Howard asked if field employees have the authority to collect money. Mr. Buckler responded no. Mr. Erney added that his review of the collection practice shows that those valves that are shut off are those customers that do not respond.

Mr. Erney read page three of the Financial Report. Mr. Bayt stated that he believes sales are better than the 5% growth shown given that some water utilities were sold this year. Chairperson Mutz asked how September 2002 sales will be compared to September 2003. Mr. Erney responded that the numbers should be close to one another.

Mr. Erney read pages 4-6 of the Financial Report. Chairperson Mutz asked about the accuracy of the legal, consulting and financial services expenses. Mr. Erney stated more expenses will be shown next month given that they are yet to be encumbered by the Department. Chairperson Mutz asked when do we pay bills. Mr. Erney responded that it depends on the terms of the contract but usually thirty days after receipt of the bill.

Ms. Coughenour noted that 2002 receipts were down from 2001. Chairperson Mutz stated that the figures reflect water pumpage was down but that as time goes on that will even out. Mr. Erney stated that in July receipts were down by 7% and now they are down by 5%.

Mr. Erney presented the sales tax item stating that the Department had not paid Indiana sales tax since April 30, 2002. Mr. Erney stated that the Department has remedied the matter and that he expects the Indiana Department of Revenue to bill the Department for approximately \$12,000 in interest due to the delay in payment. Chairperson Mutz asked if the period of non payment is commensurate with the period of our ownership. Mr. Erney responded affirmatively.

Kobi M. Wright, Special Assistant Corporation Counsel to the City of Indianapolis ("Indianapolis") stated that it was his legal opinion that USFIW should bear the cost of the interest payment. Mr. Hudson asked if penalties had been assessed by the Department of Revenue. Mr. Erney stated no. Mr. Wright stated that the rationale for USFIW paying the interest amount is that the interest payment would not occur if USFIW

had provided the Department sales tax information in a timely manner. Chairperson Mutz questioned if this payment operates as a penalty and asked if the Department had discussed the matter with Mr. Buckler. Mr. Wright responded that the issue arose this afternoon and that he had only left a voicemail message with USFIW's general counsel.

Mr. Erney announced the physical inventory of the Department's assets as set forth in Exhibit C, attached hereto and made a part hereof ("Inventory"), that shall be attached to the management agreement between USFIW and the Department is complete. He added that Inventory was jointly agreed upon by the Department and USFIW. Chairperson Mutz asked if the Utility Data Corporation ("UDC") assets had separated from the listing of Inventory. Mr. Erney stated no.

Mr. Hudson asked if there was suppose to be a budget column in the Financial Report to compare against actual amounts. Mr. Erney stated no but that the can add such a column. Mr. Hudson stated that when it is timely the Department should do so.

Chairperson Mutz recognized Chuck White, Deputy Controller of Indianapolis. Mr. White stated that in a previous Board meeting he had discussed some issues regarding 2001 sewer billings by UDC. He stated that Indianapolis received a management letter from its auditors citing Indianapolis for the difficulties concerning the ability to determine a final balance to 2001 sewer accounts receivable. Mr. White stated Indianapolis also incurred an additional bill from the auditors on this matter. Mr. White stated that if the problem is not remedied by the end of 2002, Indianapolis could receive qualified financial statements which would affect Indianapolis' bond rating. He stated that on the positive side, plan exists between Indianapolis and USFIW to address the problem.

Chairperson Mutz stated that it is common practice to receive a management letter in conjunction with an audit and that such a letter is not akin to a citation of defects but suggestions as to better management practices. He then stated that if the suggestions aren't addressed problems could arise.

Mr. Hudson asked if we have to inform the bond underwriters of this management letter. Mr. Wright stated he would have to examine the issue. Chairperson Mutz stated he does not think the bond underwriters need to be notified.

III. Report From Jim Buckler, Operation Manager of USFIW

Mr. Buckler presented his report as set forth in Exhibit C, attached hereto and made a part hereof ("USFIW Report"). Chairperson Mutz asked if complaints from customers are charted geographically. Mr. Buckler answered affirmatively and that USFIW is able to determine which plants are delivering water. He added that USFIW under the management agreement with the Department, USFIW is obligated to install "Waternet" which measures water quality standards throughout the system.

Mr. Buckler continued reading the USFIW Report. Chairperson Mutz requested a list of the Citizens Advisory Group members. Ms. Coughenour commented that she has received two calls from customers stating that when they contacted USFIW about paying incorrect bills, USFIW told them to pay the amount due lest the customer incur late fees. She added that she knows that is not the correct payment procedure and requested that Mr. Buckler address the matter.

Mr. Bayt asked about the 30 seconds incoming call incentive criterion. Mr. Buckler answered that the metric is a part of the management agreement and that the measurement in the USFIW Report is from August 2002.

Chairperson Mutz asked who pays for employee uniforms and who launders them. Mr. Buckler responded that USFIW does. Ms. Howard asked if the employees must reimburse USFIW for the cost of the uniforms upon the termination of their employment. Mr. Buckler stated that the employees return the uniforms.

Chairperson Mutz asked the identity of the Department's depositor. Mr. Erney replied that the receipts are collected at Union Federal and moved to the Department's account at Bank One daily. Chairperson Mutz stated that some of the Board members should schedule a meeting with Mr. Buckler in accordance with the law to discuss some employee matters that Mr. Odle had raised with the chairperson.

IV. Report of Carlton Curry, Director of Contracts and Operations of the Department

Mr. Curry presented his report as set forth in Exhibit D, attached hereto and made a part hereof ("Department Report"). Mr. Curry stated in connection with the Department Report that the Department's consultants are reporting their respective safety certification training and in the event it is not adequate, they will attend a USIFW safety training program.

In addition to the Department Report, Mr. Curry stated that a meeting with Plainfield officials to address items raised in the Department Report has not occurred. He added that he addressed with USFIW whether the instrumentation mentioned in the Department Report has been installed by Plainfield. He added that there appears to be difficulties communicating with key Plainfield officials on this matter. Mr. Curry stated that he has not spoken to Mr. Carlucci.

Chairperson Mutz stated that Mr. Carlucci and Boone County have requested to meet with him. Mr. Curry stated that Boone County has deferred meetings until it addresses some matters internally and Mr. Carlucci has stated that he is available.

Mr. Curry continued with the Department Report. Mr. Hudson asked if Hazin & Sawyer's expenses regarding the evaluation work of assets in the Carmel matter would be evenly shared between Carmel and the Department. Mr. Curry answered affirmatively. Mr. Hudson asked if there are financial implications regarding the Plainfield contract.

Mr. Curry answered affirmatively but that he would rather speak on this matter on another occasion. Mr. Hudson agreed but asked if Mr. Curry is following up with that matter. Mr. Curry responded affirmatively.

Mr. Curry continued with the Department Report. Mr. Bayt asked who is responsible for keeping people out of the reservoir when algae prevention applications are occurring. Mr. Curry responded that he believes that can be accomplished in coordination with the Department of Natural Resources. Mr. Bayt asked if the Department has a responsibility. Mr. Curry responded that the Department should provide notice of the application. Mr. Hudson asked if the Department is given information as to what is occurring with the water in these matters. Mr. Curry answered affirmatively and that USFIW has provided such information via notices.

Mr. Curry continued with his report. He announced that Angela Clerget has been approved by the Controller and Corporation Counsel as the contract analyst of the Department. Mr. Curry deferred to Mr. Wright concerning a recommendation about insurance and third party damages arising from main breaks whereby such breaks are not due to USFIW's negligence.

Mr. Wright stated that the Tort Claims Acts applies to the Department thereby placing a cap of \$300,000 per claim and \$5,000,000 per event. He added that given the cap and after discussion with Mr. Erney and Mr. Curry, he recommends that the Department self insure concerning third party damages arising from main breaks whereby such breaks are not due to USFIW's negligence.

Chairperson Mutz asked if the Controller agrees with this recommendation. Mr. Erney answered affirmatively. Chairperson Mutz asked Mr. Buckler if self insuring is a common practice for utilities like Indianapolis Water. Mr. Buckler responded affirmatively. Chairperson Mutz asked if the Department would accrue monthly for this obligation and if the funds set aside draw interest. Mr. Erney responded that the 2003 set aside funds have not been determined but that operationally the funds would be set aside in the general revenue fund and as the obligations arise, the amount would be charged against that fund.

Chairperson Mutz asked Mr. Curry to continue with the Department Report. Mr. Kimbell asked about the status of UDC negotiations. Mr. Curry responded that three drafts of the purchase agreement have been exchanged and that the Department is awaiting response from USFIW. Chairperson Mutz stated that he would like to see the UDC matter as a report item next month.

V. Resolution 40, 2002- Approval of Purchase of Vehicles

Mr. Wright summarized the resolution concerning the replacement of used vehicles as recommended by USFIW and reviewed by the Department. Chairperson Mutz asked USFIW if it has recommended that certain vehicles be replaced and if Mr. Curry has concurred with that conclusion. Bob Oliphant of USFIW agreed and stated the used

vehicles would be replaced with new vehicles. Mr. Erney summarized the estimated purchase price and mileage listing of the vehicles set forth in the resolution.

Mr. Bayt stated that the Department should have a mechanism to track the need for these purchases. I would hope repair bills go down. Mr. Erney responded that the Department has an obligation to provide equipment like vehicles to USFIW and to replace them. Mr. Bayt asked who repairs the vehicles. Mr. Erney responded that USFIW bears the cost.

Chairperson Mutz asked what happens to those replaced vehicles. Mr. Erney responded that they are placed in the city pool for use by other city departments or they are sent to auction. Chairperson Mutz asked if the Department gets reimbursed for the value of those replaced vehicles by the other city departments if they use those vehicles. Mr. Erney responded that he did not believe so and that the auction may be the only mechanism to get reimbursed for the value of those vehicles.

Chairperson Mutz and Mr. Bayt stated that arrangement appears unusual. Chairperson Mutz added that if these vehicles were part of Indianapolis' budget, receiving no value for use by other city departments would be fine. He added that the Department however approves its own budget and that the Department is being evaluated for use of the Department's assets standing alone from other city departments. Mr. Wright and Mr. Erney stated that they would look into the matter.

Chairperson Mutz asked Ms. Coughenour if the White River Environmental Partnership ("WREP") had addressed these concerns. Ms. Coughenour stated WREP did not work in the manner presented before the Board. She added that the city bore the cost of repairs. She added that now the city supplies the original vehicle and all subsequent vehicles are replaced by the private entity. She concluded that she did not see a problem with the Department's arrangement with USIFW.

Chairperson Mutz stated that he is concerned that the Department is replacing vehicles based on USFIW's determination. Mr. Oliphant stated that USFIW makes its recommendation based on Indianapolis' policy as to when a vehicle should be replaced. Chairperson Mutz stated that the Department's staff should examine if the Department can get reimbursed for the value of replaced vehicles. He added that with the proviso that the Department's staff report to the Board as to the trade in value matter, he was ready to accept a motion to adopt the resolution. Mr. Kimbell moved to adopt and Mr. Bayt seconded. Chairperson Mutz recognized no further discussion occurred on the matter. Resolution 40, 2002 was adopted unanimously by the Board.

VI. Resolution 41, 2002- Ratification of the Transfer of Funds and Approval of Supplement to Board Policy Concerning the Transfer of Funds From the General Revenue Fund to the Renewal and Replacement Fund.

Mr. Curry and Mr. Wright summarized the resolution. Chairperson Mutz stated that as long as the reports from the Department's staff state the balances of the bond accounts and the Controller advises the Department on the matter then the approach mentioned in

the resolution is acceptable. Chairperson Mutz asked if the funds transferred to the Renewal and Replacement Fund come from the general revenue fund after payments are made to USFIW and other bond payments. Additionally he asked if the transfer requested in the resolution is an internal transfer of funds. Mr. Wright answered affirmatively.

Chairperson Mutz asked for a motion to adopt the resolution. Ms. Howard moved for adoption and Ms. Coughenour seconded the motion. The resolution was adopted unanimously by the Board.

VII. Resolution 42, 2002- Approval of the Transfer of Funds from Character 4 to Character 3

Mr. Erney summarized the resolution. Chairperson Mutz asked if the internal transfer of funds for legal fees are due to the UDC sale and the employee lawsuit. Additionally, he asked if those funds are for the lawsuit, is it the Department's obligation to defend the suit. Mr. Erney answered affirmatively. Mr. Curry stated that USFIW is not a party to the suit. Chairperson Mutz questioned if the lawsuit is in connection with the mayor's letter and other items. Mr. Curry responded that it is concerning all the items alleged in the filed complaint. Chairperson Mutz stated he understood and that the suit appears to address matters prior to USFIW's involvement. Mr. Curry responded affirmatively.

Ms. Coughenour asked what is the budget designation "airfare, meals and transportation". Mr. Erney stated they are for travel expenditures such as a conference that Mr. Curry attended. Chairperson Mutz stated that the Department has a modest professional budget.

Chairperson Mutz recognized Mr. Wright. Mr. Wright stated that as a matter for the record, USFIW is not party to the non-union employee lawsuit however the filed complaint as alleged does mention certain USFIW individuals that could potentially lead to USFIW's involvement in the lawsuit. Chairperson Mutz stated he understood and suggested that the Department's staff report on the matter at the next Board meeting. Chairperson Mutz stated that he assumes little action has occurred on the matter. Mr. Wright stated that the lawsuit is in its incipient stages of litigation. Mr. Hudson stated that the Board has received a memorandum from counsel on the matter. Chairperson Mutz answered affirmatively.

VIII. Resolution 43, 2002- Approval of First Amendment to Agreement with Carmel

MR. Wright summarized the resolution. Mr. Kimbell moved to adopt the resolution. Ms. Coughenour seconded the motion. Ms. Coughenour questioned if Hazin & Sawyer resides in Indianapolis or Carmel. Mr. Wright responded it does not. Mr. Curry stated that the office employed on the matter is from Detroit. Mr. Hudson asked if the amendment establishes a fixed time frame for the valuation to occur. Mr. Wright

responded that it does not. Mr. Curry stated that the valuation would likely take 6-7 months to complete.

The Board unanimously adopted Resolution 43, 2002.

IX. Other Business

Chairperson Mutz asked for other business before the Board. Glenn Pratt stated that he wanted to congratulate USFIW for attending that Water Resources Board meeting that directed Legislative Services Agency to place into legislative form proposed legislation addressing law water flow. Mr. Pratt asked when he would receive reports from USFIW regarding nutrients in the reservoirs and how can he access the meeting dates of the citizens advisory group ("CAG"). He added that there was no public notice of this meeting to his knowledge

Mr. Wright stated that in there was public notice of the CAG meeting published pursuant to the law. Mr. Pratt added that such information should be posted on Indianapolis' home page. Chairperson Mutz acknowledged the validity of Mr. Pratt's concerns.

Mr. Pratt stated he was concerned about the lack of progress on the nutrient issue. Mr. Buckler responded that the CAG may fall between the requirements of a governmental body and private one given that it was established to examine the performance of USFIW on a certain incentive criterion. Chairperson Mutz stated that the CAG is part of the public-private partnership thus all concerned should bend over backwards to comply with the intent of public access law.

Mr. Pratt stated that he is still concerned about he nutrients issue. In a discussion with Mr. Pratt, Mr. Bayt asked acknowledged that Mr. Pratt regularly attends Board meetings however Mr. Bayt stated he was not clear as to how Mr. Pratt would like the Board to proceed. Mr. Bayt asked that Mr. Pratt write down his concerns and send them to the Board so that the Board can address them. Mr. Pratt stated that the goal of those he represents is to prevent NPDES permit litigation and to address the nutrient problem so chemicals are not needed for the reservoir. Mr. Bayt reaffirmed that he would like to see these concerns specifically addressed in a written format.

Ms. Coughenour asked who Mr. Pratt represents. Mr. Pratt responded that the Sierra Club and Dick Van Crank of the Audubon Society have worked with IDEM and the water company over the years on these matters. Chairperson Mutz asked Mr. Pratt to contact Mr. Curry to address his concerns.

Chairperson Mutz asked for motions to adjourn the meeting. A motion for the adjournment of the meeting was moved and seconded. The meeting adjourned at 6:45 p.m.

Approved this 21st day of October, 2002

John Mutz, Chairperson

Attest:

S. Michael Hudson,
Secretary-Treasurer